
(2015) 09 RAJ CK 0080

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 267/2015

The State of Rajasthan and Others

APPELLANT

Vs

Dalip Singh Saharan

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2015) 09 RAJ CK 0080

Hon'ble Judges : Ajit Singh, Actg. C.J. and Nirmaljit Kaur, J.

Bench : Division Bench

Advocate : S.S. Ladrecha, Addl. Advocate General, for the Appellant; S.S. Nirban, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard on admission.
2. This intra-court appeal by the State is directed against the order dated 10th December, 2012 passed by the learned Single Judge of this High Court, whereby he has allowed the respondent's S.B. Civil Writ Petition No. 3762/2005.
3. By the order under challenge, the learned Single Judge has directed the appellants not to retrench the respondent merely under the instructions of Dy. Legal Remembrance and that he be extended the same treatment as is given to similarly situated co-worker, namely, Santlal Dhaka.
4. Admittedly, there is enormous and inordinate delay of 780 days in filing the appeal. We shall, therefore, examine whether there is any "sufficient cause" for the condonation of such a huge delay.
5. The application for condonation of delay filed by the State Government alongwith the affidavit of the Officer-in-charge of the case Shri Sumer Singh, Vikas Adhikari, Panchayat Samiti. Ladhun District Nagaur reads as under: -

"1. That the appellant is filing instant special appeal against the order dt.

10.12.2012 passed by the learned Single Judge. On the basis of the grounds mentioned in the memo of appeal, the appellant has very strong case in his favour and there are fair chances of appeal being allowed if it is heard and decided on merits.

2. That the learned Single Judge disposed of the writ petition preferred by the respondent vide order dated 10.12.2012. The certified copy of which, was applied by the office of the Government Counsel, Jodhpur, which was delivered by the office of the Registry.

3. That the Government Counsel sent the certified copy along with its opinion to the Officer-In Charge of the case. Thereafter, Officer-In charge of the case sent the file to the higher authorities for further instructions in the matter.

4. That thereafter, decision for filing special appeal was taken by the Department vide meeting dt. 5.12.2014 and in pursuant thereto, sanction for filing SAW was issued on 19.2.2015. The Officer-in-Charge thereafter contacted the Additional Advocate General, Jodhpur on 5.3.2015.

6. That the Additional Advocate General dictated the special appeal/stay petition as well as application u/s. 5 of the Limitation Act on ___-3-2015 which was ready on ___-3-2015 and therefore, the same is being filed today i.e. on ___-3-2015 without any further delay in the matter.

7. That with great respect, it is most respectfully submitted that the delay caused in filing the special appeal is bonafide and due to official procedure and there is no intentional or deliberate delay on the part of the appellant."

6. The recent decision of the Supreme Court in Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another, is directly on the point. In this case there was a delay of 427 days in filing the appeal before the Supreme Court against the judgment of the High Court and the certified copy of the High Court judgment was applied after four months with no explanation why it was not applied for within a reasonable time. The Supreme Court after examining other dates mentioned in the affidavit of the person-in-charge of the case to justify the delay found that there was delay at every stage with no explanation for the cause of delay. The Supreme Court also took serious note of the casual manner in which the Government departments are functioning showing virtually no respect to the law of limitation. And, while dismissing the appeal on the ground of delay, the Supreme Court has made the following observation:

"The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable

explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

7. In yet another recent decision, the Supreme Court in *Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai*, has held that in cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

8. In the present case also, although the order under challenge is dated 10th December, 2012, the application for its certified copy was made on 28.2.2015 i.e. after more than two years and two months with no explanation whatsoever why it was not applied within a reasonable time. Not only this, it is stated in the application that the decision to file special appeal was taken after almost two years on 5.12.2014 and yet the Officer-In-charge contacted the Additional Advocate General on 5.3.2015. Also para-6 of the application shows that space for mentioning the date on which the appeal was dictated by Additional Advocate General, the date on which the appeal was ready and the date on which the appeal was filed are left blank. Such has been the casual approach of the appellants. Though, it is stated that delay in filing the appeal is bonafide, the fact remains that from day one, the authorities concerned have not evinced diligence in pursuing the matter for filing the present intra-court appeal by taking appropriate steps. The State has miserably failed to give any acceptable and cogent reason to condone such a huge delay in filing the intra-court appeal required to be filed in the same High Court building and that too when the order under challenge was passed in the presence of Government Advocate.

9. Having regard to the above referred decisions of the Supreme Court in *Office of the Chief Post Master General (supra)* and *Maniben Devraj Shah (supra)* and the fact situation of the present case, we find no sufficient cause to condone the delay.

10. In the result, the application for condonation of delay is dismissed. Consequently, the appeal is dismissed on the ground of delay.

11. A copy of this order be sent to the Law Department, Government of Rajasthan, Jaipur for information.